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No. 408

In the Supreme Court of the United States

OCTOBER TERM, 1960

ANTHONY JOSEPH ACCARDO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General.
CHARLES K. RICE,
Assistant Attorney General.
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On April 25, 1960, a three-count indictment was returned against petitioner in the United States District Court for the Northern District of Illinois, charging him with having made, subscribed and filed federal income tax returns "containing misstatements regarding his automobile expense deductions", in violation of Section 7206(1) of the Internal Revenue Code of 1954. (Pet. 4, 21.) Petitioner moved to dismiss the indictment, arguing that it is fatally vague, uncertain, duplicitous, and contains a false allegation. He also served subpoenas *duces tecum* upon the United States Attorney and an official of the Internal Revenue Service, calling for documents intended for use as evidence in support of the motion to dismiss. (Pet. 3.) The

District Court, after hearing extensive oral arguments, quashed the subpoenas and denied the motion to dismiss the indictment. Petitioner's appeal to the Seventh Circuit was denied, without opinion, for lack of jurisdiction "because the order from which this appeal is taken is not a final and appealable order." (Pet. 25.)

The ruling below is clearly correct. 28 U.S.C. 1291; *Berman* v. *United States*, 302 U.S. 211, 212–13; *Cobbledick* v. *United States*, 309 U.S. 323. Petitioner concedes (Pet. 18) that denial of a motion to dismiss an indictment is not a final order, but contends that his case is so "extraordinary and unusual" (Pet. 18) that an exception should be made. Even if "extraordinary and unusual" circumstances could justify an exception to the rule, they are certainly not present here.

The petition for certiorari should be denied.

Respectfully submitted.

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Solicitor General.

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MEYER ROTHWACKS,
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SEPTEMBER
~~OCTOBER~~ 1960.